

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE**

IN RE EVOLVE BANK & TRUST)	NO. 2:24-md-03127-SHL-CGC
CUSTOMER DATA SECURITY)	
LITIGATION)	JUDGE LIPMAN
)	MAGISTRATE JUDGE CLAXTON

MOTION TO APPOINT LEADERSHIP

Plaintiffs Anton Shevchenko, Allen Payne, Anthony Webster, Lisa Adewole, Joseph Biron, Alec David Kovalczik, Ian Katsnelson, Jessica Marcantel, Racqual Hohler, Samantha Walker, Susan Colby, Duncan Meadows, Gabriel Stiritz, Towfeq Sarif, Norilyn Prystalski, Patrice Perrier, Jodi McLaughlin, Bharath Rayam, Randell Huff, Charles Vojta, Alisha Mitchell, Carl Bennett, Charlton Batts, Xylia Sparks-Davis, Jackson Dubray, Jasmine Mack, William Britton, Trae Santiago, Terrance Pruitt, Chana Bynoe, Edward Nantz, Adam White, Tracy Starling, Kendra Buchanan, Samantha Walker, Britney Sipra, Tamaika Osby, Teresa Faulkner, Julie Ritchey, Natasha Quiates, Evin Shefa, Carmelot St-Louis, Jordan Bell, David Henderson, Jose Moran, Charlie Anderson (“Plaintiffs”) respectfully move the Court pursuant to Rule 23(g)(3) to appoint a Plaintiffs’ Executive Committee with J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC (“SJG”) as Lead Counsel and Gary Klinger, Linda Nussbaum, Jeff Ostrow, James Pizzirusso, Scott Poynter and Lynn Toops as Members of the Executive Committee and Frank Watson of Watson Burns, PLLC as Liaison Counsel. In total, the proposed leadership slate has secured the support of forty-six plaintiffs.¹

I. BACKGROUND

This Action arises from the unauthorized disclosure of Plaintiffs’ and the millions of proposed Class Members’ personally identifiable information during a February 2024 cyberattack

¹ To date, complaints have been filed on behalf of fifty-seven plaintiffs.

that Defendant Evolve Bank & Trust (“Evolve” or “Defendant”) became aware of in May 2024 (the “Data Breach”). Plaintiffs allege that Evolve failed to implement reasonable, industry standard and regulatorily required cybersecurity safeguards necessary to protect their PII from unauthorized disclosure to cybercriminals. To remedy the harms associated with the Data Breach, Plaintiffs have filed twenty-two class actions in multiple federal district courts (the “Related Actions”). On September 26, 2024, the Judicial Panel on Multidistrict Litigation held a hearing to determine whether to centralize the Related Actions and, if so, where the cases should be heard. On October 4, 2024, the Judicial Panel on Multidistrict Litigation held that the Related Actions should be centralized and heard before the Honorable Sheryl Lipman in the Western District of Tennessee.

Importantly, the leadership team proposed here have already begun working extensively on behalf of the Class. The MDL petition filed in this case that led to centralized in this Court was filed and argued by Mr. Stranch. Since the MDL petition was granted, the proposed leadership team has negotiated and undergone private ordering to organize the slate and secure support from various firms. Moreover, Mr. Stranch has begun early discussions with opposing counsel and has secured an agreement to pursue early resolution of this case through mediation, which is now scheduled for January 31, 2025, with the Honorable Diane Welsh (ret.).

II. ARGUMENT OF LAW

A. Standard

Under Rule 23(g)(3) “[t]he Court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). *See Wolpert v. Branch Banking Tr. & Co.*, No. 3:19-cv-138, 2023 WL 3263487, at *4 (E.D. Tenn. Mar. 23, 2023). Appointment of class counsel is warranted when there are “competing or similar lawsuits pending.” *Id.* (citation omitted). “[D]esignation of interim [class] counsel

clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.”² In considering whom to appoint, the Court looks to the factors under Rule 23(g)(1): (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions and other complex litigation, as well as the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). The Court may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B); *see also* Fed. R. Civ. P. 23(g)(4). By far the most common method employed to select class counsel leadership is the private ordering method whereby counsel confer amongst themselves and agree on a leadership structure. MANUAL ON COMPLEX LITIGATION § 21.272.

Here, the undersigned Plaintiffs’ Counsel have conferred amongst themselves and agreed that J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC should represent the proposed Class as Lead Counsel. Moreover, the undersigned Plaintiffs’ Counsel agree that Gary Klinger of Milberg Coleman Bryson Grossman, LLC; Linda Nussbaum of Nussbaum Law Group, PC; Jeff Ostrow of Kopelowitz Ostrow Ferguson Weiselberg Gilbert; James Pizzirusso of Hausfeld LLP; Scott Poynter of Poynter Law Group; and Lynn Toops of Cohen & Malad LLP should serve as Members of Plaintiffs’ Executive Committee. Moreover, Plaintiffs request that the Court name Frank Watson of Watson Burns, PLLC as Liaison Counsel.

B. Proposed Leadership Structure

Plaintiffs move for the creation of a six-person Executive Committee with a single Lead

² MANUAL FOR COMPLEX LITIGATION § 21.11 (2004).

Counsel. The undersigned Counsel believe such a leadership structure is appropriate here because a single Lead will promote efficiency while still retaining the valuable input, manpower, and resources of the additional Executive Committee members representing a diverse group of clients. The structure will eliminate duplications of efforts, control costs, and ensure Plaintiffs and the Class have the benefit of a variety of experiences and perspective and access to significant resources. The proposed structure also includes Liaison Counsel to assist with administrative matters and coordination with the Court. MANUAL FOR COMPLEX LITIGATION § 10.221 (detailing the role of liaison counsel). Plaintiffs believe the structure is ideal in this case.

C. J. Gerard Stranch, IV, and Stranch, Jennings & Garvey, PLLC

Mr. Stranch is a third-generation trial lawyer and the founding and managing member of SJG, the largest and most successful Tennessee-based class action firm. SJG's firm resume is attached as **Exhibit A**. Although Mr. Stranch has a national practice, he has extensive experience in Tennessee, including in data breach class actions. Mr. Stranch has significant experience in organizing and managing complicated litigation. He was the lead trial attorney and managed over twenty attorneys plus paralegals and clerks for the *Sullivan Baby Doe* opioids case against Purdue Pharmaceuticals, Mallinkrodt and Endo Health Solutions and Endo Pharmaceuticals, Inc. (*Staubus v. Purdue Pharma LP*, No. C41916-C (Tenn. Cir. Ct.), which resulted in two bankruptcies that included multi-billion dollar national settlement deals for Purdue Pharma and Mallinckrodt, and a default judgment on liability against Endo for repeated discovery violations. The landmark case settled on the eve of trial for thirty-five million dollars, the largest per capita recovery against Endo by multiple orders of magnitude.

Mr. Stranch's reputation for quality litigation and his ability to work fairly and cooperatively with co-counsel led to his selection from the hundreds of lawyers in the *In Re*

National Prescription Opiate Litigation MDL to serve and to be appointed as one of only three lawyers in private practice as class counsel for the Negotiation Class. Moreover, Mr. Stranch was appointed to serve on the steering committees of *In re Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, No. 15-MD-02672 (N.D. Cal.), which resulted in approximately seventeen billion dollars in settlements. He was co-lead counsel in *In re Alpha Corp. Securities Litigation*, which resulted in a \$161 million settlement, and lead counsel in *Lankford v. Dow Chemical* (consumer protection class action), which resulted in a \$4.2 million settlement. He helped obtain a \$590.5 million settlement while serving on the executive committee in *Dahl v. Bain Capital Partners* (anti-trust) and served as liaison counsel in *In re Regions Morgan Keegan Closed-End Fund Litigation*, resulting in a sixty-two million dollar settlement. Furthermore, he was appointed to the Plaintiff Steering Committee for the *In re New England Compounding Pharmacy, Inc. Products Liability Litigation MDL* and the lawyer in charge of coordinating all Tennessee litigation.³

Mr. Stranch regularly litigates complex class actions in Tennessee state and federal courts, including as noted above. For example, he was appointed Interim Co-Lead Counsel in *In re HCA Healthcare, Inc. Data Security Litigation* (M.D. Tenn.), in which millions of patients’ data was disclosed. Moreover, Mr. Stranch was appointed Interim Lead in *Ducrepin v. United Seating & Mobility* (M.D. Tenn.). And he was appointed Interim Lead Counsel in *Smith v. Specialty Networks, LLC*, No. 1:24-cv-286 (E.D. Tenn.). Mr. Stranch is also litigating several other data breach class actions in Tennessee. *Lytle v. Revance Therapeutics*, No. 23C1897 (Tenn. Cir. Ct.) (final approval granted); *Taylor v. Nissan N. Am., Inc.*, 3:24-cv-653 (M.D. Tenn.); *Edwards v. Concord Music Grp., Inc.*, No. 3:24-cv-00196 (M.D. Tenn.) (settlement in principle reached);

³ More than \$230 million in settlements have been obtained on behalf of the victims of the New England Compounding Pharmacy and every Tennessee case has been resolved.

Lewis v. Mountain View Hospital, LLC, No. 3:24-cv-00175 (M.D. Tenn.) (settlement pending); *Arend v. Newcourse Comms., Inc. & First United Bank & Tr.*, No. 23C303 (Tenn. Cir. Ct.) (final settlement approval granted); *Smith v. Human Tech., Inc.*, No. CH-24-0085 (Tenn. Ch. Ct.).

In addition to his ongoing cases, Mr. Stranch has a long history of successfully litigation data breach class actions. *See, e.g., K.B. (minor) through Joan Blank v. E. Tenn. Children's Hosp. Assoc., Inc.*, No. C2LA0081 (Tenn. Cir. Ct.); *Julien, v. Cash Express, LLC.*, No. 2022-CV-221 (Tenn. Cir. Ct.) *In re CorrectCare Data Breach Litig.*, No. 5: 22-cv-319 (E.D. Ky.); *McKenzie v. Allconnect, Inc.*, No. 5:18-cv-00359 (E.D. Ky); *In re: Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617 (N.D. Cal.); *Berthold v. Norton Healthcare, Inc.*, No. 23-CI-003349 (Ky Cir. Ct.); *Slos v. Select Health Network*, No. 71D05-2022-PL-000060 (Ind. Super. Ct.); *Martinez v. Presbyterian Healthcare Servs.*, No. D-202-CV-2020-01578 (N.M. Dist. Ct.); *Henck v. Squirrel Hill Health Ctr.*, No. GD-21-014637 (Pa. Ct. Cm. Pls.); *Molinari v. Welfare & Pension Admin. Servs., Inc.*, No. 22-2-04023-8 SEA (Wash. Super. Ct.); *Richardson v. Gershman Inv. Corp.*, No 22SL-CC-03085 (Mo. Cir. Ct.); *In re Goodman Campbell Brain and Spine Data Inc. Litig.*, No. 49D01-2207-PL-024807 (Ind. Super. Ct.); *In re PharMerica Data Breach Litig.*, No. 3:23-cv-00297 (W.D. Ky.); *Weber v. Nat'l Advisors Tr.*, No. 4:24-cv-00162 (W.D. Mo.). Mr. Stranch's extensive experience in class action litigation, and specifically in data breach cases, makes him superbly qualified to serve as Lead Counsel.

In addition, Mr. Stranch has already devoted significant work in this case. He has been investigating the claims and underlying facts in this case since before the various complaints were filed. He has also coordinated the litigation with Defense counsel in a manner that is directed at saving insurance policy funds for the potential benefit of the class. Finally, Mr. Stranch has been a leader in this litigation from the beginning. For example, Mr. Stranch petitioned for the creation

of this MDL and presented oral argument for centralization in this venue before the Judicial Panel on Multidistrict Litigation. Lastly, Mr. Stranch and SJG have the necessary significant resources to devote to prosecuting this litigation without any outside funding.

D. Gary Klinger

Mr. Klinger is a Senior Partner at Milberg and Chair of its Cybersecurity and Data Privacy Practice Group. Located in Chicago, Illinois, Mr. Klinger is recognized as one of the most respected data privacy attorneys in the United States, having been ranked by Chambers and Partners as Band Three for Privacy & Data Security Litigation (2024)⁴ and having been selected to Lawdragon's 500 Leading Litigators in America for his accomplishments in privacy litigation (2024).⁵ Law360 recently highlighted Mr. Klinger's work in the privacy space.⁶

He has extensive experience serving as leadership in numerous privacy class actions, including as lead or co-lead counsel in the largest data breaches in the country. *See, e.g., In re MoveIt Customer Data Security Breach Litig.*, No. 1:23-md-03083 (D. Mass.) (appointing Mr. Klinger to the leadership committee in multi-district litigation involving a data breach that impacted more than ninety-five million consumers); *Isaiah v. LoanDepot, Inc.*, No. 8:24-cv-00136 (C.D. Cal) (appointing Mr. Klinger co-lead counsel in a data breach that impacted seventeen million consumers). Mr. Klinger and his firm have played an important role in developing the favorable case law that many plaintiffs rely on in the data breach space. *See e.g., Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365 (1st Cir. 2023) (obtaining a decision from the First Circuit

⁴ Only three plaintiffs' lawyers in the country received the distinction of being ranked by Chambers and Partners for Privacy & Data Security Litigation.

⁵ *See* Chambers & Partners, *Gary Klinger*, <https://chambers.com/lawyer/gary-klinger-usa-5:26875006> (last visited Oct. 25, 2024); Katrina Dewey, *The 2024 LawDragon 500 Leading Litigators in America*, LAWDRAGON (Sept. 8, 2023), <https://www.lawdragon.com/guides/2023-09-08-the-2024-lawdragon-500-leading-litigators-in-america>.

⁶ Law 360, *Rising Star: Gary Klinger*, <https://www.law360.com/articles/1854005/rising-star-milberg-s-gary-klinger> (last visited Oct. 25, 2024).

reversing the dismissal with prejudice of a data breach case and finding Article III standing); *In re Arthur J. Gallagher Data Breach Litig.*, 631 F. Supp. 3d 573, 586 (N.D. Ill. 2022) (Milberg attorneys largely defeated a motion to dismiss in a data breach case involving three million consumers); *Flores v. Aon Corp.*, 2023 IL App. (1st) (230140) obtaining a reversal of a dismissal with prejudice in a data breach class action); *In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-MN-02972, 2021 WL 2718439, at *1 (D.S.C. July 1, 2021) (defeating a standing challenge in a ten million person data breach case).

Over the past three years, Mr. Klinger has settled on a classwide basis more than 100 class actions involving privacy violations, the majority of which are data breaches, in state and federal courts across the country as lead or co-lead counsel. To his knowledge, no other attorney in the country has settled and won court approval of more data breach class actions during this period. Representative cases include *Parris v. Meta Platforms, Inc.*, No.2023LA000672 (Ill. Cir. Ct.) (serving as lead counsel and obtaining a settlement of \$64.5 million for four million consumers in a privacy class action); *Boone v. Snap, Inc.*, No. 2022LA000708 (Ill. Cir. Ct.) (serving as lead counsel and obtaining a settlement of \$35 million for three million consumers in a privacy class action); *In re East Palestine Train Derailment*, No. 23-cv-00242 (N.D. Ohio) (serving on the leadership team that obtained a settlement of \$600 million in a complex class action).⁷ Mr. Klinger's resume is attached as **Exhibit B**.

E. Linda Nussbaum

Ms. Nussbaum has been a leader of the plaintiffs' class action bar for over 35 years. After

⁷ Mr. Klinger has also successfully litigated privacy class actions through class certification. *See, e.g., Sewall v. Home Partners Holdings LLC*, No. A23-1662, 2024 WL 64318, at *1 (Minn. Ct. App. Jan. 2, 2024) (denying interlocutory review to an order granting class certification to a class of lessees in a landlord-tenant dispute); *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. 2018) (certifying, over objection, a nationwide privacy class action involving more than one million class members; the case ultimately settled for \$6.5 million).

practicing as a senior partner in two preeminent plaintiffs' firms, Ms. Nussbaum formed Nussbaum Law Group, P.C. in April 2015 as a woman-owned and led firm prosecuting precedent-setting class litigation with the singular focus of providing the highest level of service and best results. She has served as Lead or Co-Lead counsel in over 25 class actions, including significant data breach cases. In *In re Morgan Stanley Data Security Litigation*, No. 1:20-cv-05914 (S.D.N.Y.), Ms. Nussbaum, as one of two lead counsel, led the effort to secure a \$60 million non-reversionary cash fund in addition to benefits valued at over \$8 million for 15 million class members. At the final approval hearing, Judge Paul A. Engelmayer remarked that Plaintiffs were represented by "first-rate lawyers." In addition, Ms. Nussbaum was recently Co-Lead Counsel for the Settlement Class in *Nanette Katz v. Einstein Healthcare Network*, No. 21040204 (Pa. Ct. Cm. Pls.).

Ms. Nussbaum is currently one of two LabCorp Track Co-Lead Counsel in the AMCA multidistrict litigation for a proposed class of 10 million LabCorp patients. *In re Am. Med. Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-02904 (D.N.J.). She has played a significant role in discovery in that matter, taking key depositions and working closely with experts. Ms. Nussbaum was appointed as lead counsel in *In re Centrastate Healthcare Data-Security Incident Litig.*, MON-L-000504-23 (Sup. Ct. N.J.), a recently settled case involving a ransomware attack on a private not-for-profit health organization. Ms. Nussbaum was also appointed to the Plaintiff Executive Committee in *In re Independent Living Systems Data Breach Litig.*, 23-cv-21060 (S.D. Fla.), a case that involves the PII and PHI of a nationwide class of over 4.2 million individuals. Most recently, Ms. Nussbaum was placed in charge of over four million Northwell Health plaintiffs in *In re Perry Johnson & Assoc. Med. Transcription Data Security Breach Litig.*, 24-md-03096 (E.D.N.Y.).

In addition to her data breach experience, Ms. Nussbaum has been appointed lead counsel

in over 20 direct-purchaser antitrust class actions and is presently one of the lead counsel for a certified Rule 23(b)(2) certified class of merchants in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 05 MDL 1720 (E.D.N.Y.).

Ms. Nussbaum has also been a trial team member in several class actions. Although most commenced trial and then settled at some point before verdict, she prosecuted as co-lead trial counsel and appealed a landmark RICO case concerning the prescription drug Neurontin. *In re Neurontin Marketing and Sales Practices Litig.*, No. 04-cv-10981 (D. Mass.). After a five-week jury trial in Boston, where the jury returned a verdict for Kaiser for over \$47 million, which was statutorily trebled to over \$142 million. Ms. Nussbaum's resume is attached hereto as **Exhibit C**.

F. Jeff Ostrow

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. ("KO") and has been practicing law for twenty-seven years, establishing the South Florida-based firm immediately following his graduation from law school in 1997 and since growing it to twenty-five attorneys.

Mr. Ostrow has extensive experience handling consumer class actions. He has recovered over a billion dollars for his clients. In the privacy sector, he is counsel of record in nearly 200 pending data breach cases and has settled dozens. He is currently Lead Counsel in MDL No. 3090, *In re Fortra File Transfer Software Data Sec. Breach Litig.*, No. 24-md-3090 (S.D. Fla.), which involves 10 defendants and 6 million people. Additional examples of other cases in which he serves as Lead Counsel include *Crowe v. Managed Care of N. Am., Inc.*, No. 23-cv-61065 (S.D. Fla.) (eight million people); *In re Zeroed-In Techs., LLC Data Breach Litig.*, No. 1:23-cv-03284 (D. Md.) (two million people), *Harrell v. WebTPA Employer Servs. LLC*, No. 3:24-cv-01160 (N.D. Tex.) (2.5 million people); *Stallone v. Fin. Bus. & Consumer Sols., Inc.*, No. 2:24-cv-01876 (E.D. Pa.) (two million people); *Gambino v. Berry, Dunn, Mcneil & Parker LLC*, No. 2:24-cv-146 (D.

Me.) (two million people); *In re HealthEquity, Inc. Data Sec. Incident Litig.*, No. 2:24-cv-528 (D. Utah), (4.3 million people); and *Butler v. Acadian Ambulance Serv., Inc.*, No. 6:24-cv-01011 (W.D. La.) (three million people).

Federal judges have recognized Mr. Ostrow's commitment to excellence. In *Farrell v. Bank of America, N.A.*, 327 F.R.D. 422, 432 (S.D. Cal. 2018), in which Mr. Ostrow served as lead counsel on behalf of millions of people, U.S. District Judge James Lorenz made the following observation when granting final approval of a settlement that included a sixty-eight million dollar recovery and \$1.2 billion in injunctive relief requiring the defendant bank to stop an enormously lucrative practice:

Class Counsel achieved this result through tenacity and great skill. In all of their written submissions and in their presentation at the Final Approval Hearing, Class Counsel's arguments were laudably clear and precise, no small feat given the complexity of the legal questions at issue here. It is clear that substantial preparation went into all of Class Counsel's work on this case.

Similarly, when approving a \$13 million settlement in which Mr. Ostrow was one of the lead counsel, United States District Judge James Lawrence King commented that "Class Counsel's efforts in pursuing and settling these consumer claims were, quite simply, outstanding." *In re Checking Account Overdraft Litig.*, No. 1:09-md-02036, 2013 WL 11319244, *16 (S.D. Fla. Aug. 2, 2013). *See* Mr. Ostrow's Firm Resume attached hereto as **Exhibit D**.

G. James Pizzirusso

Although he now calls Virginia home, Mr. Pizzirusso is a native Memphian who was born and raised in Midtown where his parents still reside. He was salutatorian of the 1994 class at Central High School in Memphis and a Whittle Scholar at the University of Tennessee-Knoxville. As a founding member of DC-based Hausfeld and Chair of the firm's data breach practice group, Mr. Pizzirusso has achieved national renown and unmatched success over the past decade as one

of the country's preeminent cybersecurity attorneys. Hausfeld is the only plaintiffs' firm in the country ranked by Legal500 in Cyber Law.⁸ In 2024, Chambers and Partners ranked Mr. Pizzirusso (for the fourth year in a row) as a top lawyer in "Privacy and Data Security: Litigation." It described Mr. Pizzirusso as "a highly experienced litigator, noted for his successful track record acting for plaintiffs in high-stakes cybersecurity and privacy law class actions."⁹ Hausfeld is also the only Plaintiffs' firm in the country to be ranked (for the third year in a row) by Chambers in the category of Privacy & Data Security-Litigation where they wrote: "Hausfeld's team is talented across the board, it contains some of the hardest-working and smartest lawyers."¹⁰ The National Law Journal also named Mr. Pizzirusso as one of its "2023 Class Action/Mass Tort Trailblazers"¹¹ and in 2017 as a "Cybersecurity Trailblazer."¹²

Given his extensive expertise and accomplishments in this field, starting a decade ago with the *In re Target* data breach MDL in 2014, over 27 courts (including 9 MDLs) have appointed Mr. Pizzirusso personally to leadership positions in data breach class actions and he has effectively directed and worked with hundreds of lawyers, including all of those seeking appointment here. He also negotiated the two largest data breach settlements ever reached. Judge Brian C. Wimes appointed Mr. Pizzirusso as one of the Co-Lead Counsel in *In re T-Mobile Data Security Breach*

⁸ Legal 500, *Cyber law (including data privacy and data protection) - Hausfeld LLP* (last visited Oct. 21, 2024), <https://www.legal500.com/rankings/ranking/c-united-states/media-technology-and-telecoms/cyber-law-including-data-privacy-and-data-protection/50193-hausfeld-llp>.

⁹ Chambers & Partners, *Department profile, Hausfeld, Privacy & Data Security: Litigation* (last visited Oct. 21, 2024), <https://chambers.com/department/hausfeld-llp-privacy-data-security-litigation-usa-5:2933:12788:1:193727>.

¹⁰ *Id.*

¹¹ ALM, *Trailblazers Class Action | Mass Tort Litigation 2023*, NAT'L L.J., (Fall 2023), https://images.law.com/media/nationallawjournal/supplements/NLJTB_ClassActionLitigation_2023/index.html#p=6.

¹² *Trailblazers Cybersecurity and Data Privacy*, at 52, NAT'L L.J., (Nov. 2017), https://images.law.com/media/nationallawjournal/supplements/NLJTB_CYBER_2017/mobile/index.html.

Litig., MDL No. 4:21-md-03019 (W.D. Mo.), where he helped reach a settlement valued at \$500 million (the second largest data breach settlement) for the 70 million victims of the breach. Judge Thomas W. Thrash also appointed Mr. Pizzirusso to the Plaintiffs Steering Committee and Settlement Committee in *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, MDL No. 1:17-md-2800 (N.D. Ga.), where he was also instrumental in putting together the largest ever data breach settlement: a \$500 million cash settlement with \$1 billion in upgraded data security. Aside from settlements, Judge Paul Grimm (ret.) appointed Mr. Pizzirusso as Co-Lead Counsel in *In re Marriott International Inc., Customer Data Security Breach Litig.*, MDL No. 19-md-2879 (D. Md.), a breach impacting over 300 million customers. In Marriott, Mr. Pizzirusso became one of the few lawyers to litigate and certify a data breach case as a class action (his second). See *In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128 (D. Md. 2022) (subsequent history omitted). Hausfeld will fully self-fund its share of expenses in this case without outside funding. Hausfeld's Firm Resume is attached hereto as **Exhibit E**.

H. Scott Poynter

Scott Poynter has practiced law for almost 35 years. After graduating the University of Arkansas, School of Law in 1989, Poynter served as a Judge Advocate in the United States Air Force and Air Guard for 13 years. He attained the rank of Major. After active duty, Scott focused his work on the representation of shareholders, employees, and consumers, mostly, in class action and mass tort litigation. In those complex cases, several federal and state courts across the Country appointed Scott to lead counsel and executive committee positions. In all, Scott has more than 28 years of class action and multidistrict litigation experience.

Poynter is a native Arkansan and second-generation lawyer. Since leaving Active Duty in 1996, much of his focus has been in litigating Arkansas state court class action cases. Here, Poynter

has brought the same data breach claims against Evolve, an Arkansas-chartered bank, on behalf of Arkansan Gabriel Matthews and a class of similarly situated Arkansans. The case is filed in Pulaski County Circuit Court and styled *Matthews v. Evolve Bank & Trust*, Case No. 60CV-24-7912 (the, “Matthews Action”). The Matthews Action is the only Evolve data breach state court class action case on file, and will be coordinated with this MDL through the proposed leadership team.

Outside the State of Arkansas, and fairly recently, Poynter served as lead counsel in five class action cases in Oklahoma state courts against the oil and gas industry related to their disposal of wastewater from fracking operations, which caused thousands of earthquakes throughout Oklahoma. Poynter has been called the “pioneer” of induced seismicity litigation, and lawyers appearing in these cases have even said he “invented it.” In all, Poynter recovered over \$25 million for home and business owners, the Pawnee Nation of Oklahoma, and St. Gregory’s University in Shawnee. Additionally, Poynter served as a member of several Executive Committees in multidistrict litigations involving agricultural issues in Missouri and Kansas. For more detail, see Mr. Poynter’s firm resume, **Exhibit F**.

I. Lynn Toops

Ms. Toops is highly qualified to serve in this role and has a proven track record of representing and advancing the interests of consumer classes. The firm resume of C&M is attached as **Exhibit G**.

Ms. Toops and C&M enjoy an excellent reputation as a leading class action law firm across the country. *See, e.g., In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038- MWB (N.D. Iowa Nov. 9, 2011) (commenting that “fabulous results” were achieved for the class with “incredible efficiency”). Indeed, for the past 50 years, C&M has served as class counsel in numerous local, statewide, multi-state, nationwide, and even international class actions. *See, e.g.,*

In re Holocaust Victim Assets Litig., 105 F. Supp. 2d 139 (E.D.N.Y. 2000) (settlement of \$1.25 billion for claims relating to conversion of bank accounts and property of victims of the Holocaust); *Raab v. R. Scott Waddell, in his official capacity as Commissioner of the Indiana Bureau of Motor Vehicles et al.*, Nos. 49D12-1303-PL-008769, 49D11-1310-PL- 038001 (Ind. Super. Ct.) (settlements, including after trial and judgment, of approximately \$100 million in overcharges for motor vehicle and license fees).

Of particular importance here, Ms. Toops has extensive experience in data breach and privacy matters. Ms. Toops and her team are currently litigating dozens of actions challenging inadequate cybersecurity protocols that resulted in the unauthorized access, theft, and/or distribution of highly sensitive data. Ms. Toops and her team are also currently litigating dozens of actions challenging the use of third-party tracking source code on the websites and patient portals of numerous health institutions across the country. Ms. Toops currently serves as sole lead counsel in other data breach and privacy class actions currently pending in Indianapolis Commercial Court, *In Re: Eskenazi Health Data Incident Litigation*, Cause No. 49D01-2111-PL-038870, a data breach that affected over 1.5 million patients of Eskenazi, *In re Community Health Data Incident Litigation*, No. 49D01-2211-PL-041242, a privacy matter affecting over 500,000 individuals. Ms. Toops also served on the Executive Committee in a consolidated federal class action data breach against Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. concerning a data breach that affected 10.5 million consumers. *Excellus Data Breach Litig.*, No. 6:15-CV-06569 (W.D.N.Y). Furthermore, she served as lead counsel in *In re Medical Informatics Engineering, Inc., Customer Data Security Breach Litig.*, MDL 2667 (N.D. Ind.), which settled on a class-wide basis for millions of consumers affected by a data breach, and played a significant role in *In re Anthem, Inc. Data Breach Litig.*, MDL 15-MD-02617 (N.D. Cal.), which settled on a class-wide

basis for nearly eighty million consumers.

Ms. Toops is also the former Chair and Vice Chair of the American Association for Justice's Data Breach Litigation and Privacy Committee. She also has been recently appointed interim co-lead counsel in the following consolidated actions related arising out of data breaches:

- In February 2023, Ms. Toops was appointed interim co-lead counsel in *In re CorrectCare Data Breach Litigation*, No. 5:22-319 (Feb. 22, 2023) (Dkt. No. 33), a consolidated action in United States District Court for the Eastern District of Kentucky arising from a data breach to CorrectCare's system discovered on July 6, 2022, where the data was subjected to unauthorized access for nearly six months involving at least 496,589 patients' private information.
- In August 2023, Ms. Toops was appointed interim co-lead counsel in *In Cain v. CGM, LLC*, No. 1:23-cv-02604 (Aug. 23, 2023) (Dkt. No. 26), a consolidated action in United States District Court for the Northern District of Georgia arising from a data breach to CGM's system involving roughly 300,000 consumers' private information.
- In September 2023, Ms. Toops was appointed interim co-lead counsel in *Smith v. Apria Healthcare, LLC*, No. 1:23-cv-01003 (Dkt. No. 49), a consolidated action in United States District Court for the Southern District of Indiana arising from a data breach to Apria's system affecting 1.8 million patients' private information.
- In October 2023, Ms. Toops was appointed to the Plaintiffs' Executive Committee in *Lurry v. Pharmerica Corporation*, No. 3:23-CV-297 (W.D. Ky.), a consolidated class action arising out of the data breach to PharMerica's system affecting over 5.8 million patients' private information.
- In April 2024, Ms. Toops was appointed interim lead counsel in *In re CNO Financial Group, Inc. Data Incident Litigation*, 24-cv-00275, a consolidated action in the United States District Court for the Southern District of Indiana arising from a "SIM attack" on a CNO senior officer's phone, affecting over 66,000 individuals' personal information.
- In April 2024, Ms. Toops was appointed interim co-lead counsel in *In re Valley Oaks Data Incident Litig.*, No. 79D01-2403-PL-000032 (Tipp. Co. Sup. Ct. Apr. 18, 2024), a consolidated action arising out of a regional primary medical care provider group, affecting over 50,000 patients.
- In June 2024, Ms. Toops was appointed interim co-lead counsel in *Rehmsmeyer v. Premium Mortgage Corp.*, No. E2024001652 (N.Y. Sup. Ct. Monroe Co. Jun. 3, 2024), a consolidated action in the Monroe County Supreme Court arising out of the data breach at a residential mortgage corporation.

- In June 2024, Ms. Toops was appointed interim co-lead counsel in *In re Otolaryngology Associates Data Incident Litigation*, No. 29D02-2404-PL-3853 (Ind. Comm. Ct.) (Ham. Co. Sup. Ct., Jun. 27, 2024), a consolidated action arising out of the data breach of a large private practice Ear, Nose and Throat group affecting over 316,000 patients.
- In August 2024, Ms. Toops was appointed as sole lead counsel in *In re Asbury Automotive Group, Inc. Data Incident Litigation*, No. 1:24-mi-55555 (N.D. Ga.), a consolidated action arising out of the data breach of Asbury Automotive, a Fortune 500 company and one of the largest automotive retailers in the U.S.
- In August 2024, Ms. Toops was also appointed to the Plaintiff's Executive Committee in *In re HealthEquity, Inc. Data Security Incident Litigation*, No. 2:24-cv-00528 (D. Utah), a data breach of a health saving account program affecting 4.3 million consumers.
- In August 2024, Ms. Toops was also appointed to the Executive Committee in *Negron v. Ascension Health*, No. 4:24-cv-669 (E.D. Mo. Aug. 6, 2024), a data breach arising out of a nationwide healthcare provider believed to have affected millions of patients nationwide.
- In September 2024, Ms. Toops was appointed as Interim Class Counsel in *In re Lurie Children's Data Breach Litigation*, No. 2024CH00869, (Cook County, Ill.) a class action arising out of the data breach at Lurie Children's Hospital, affecting roughly 761,000 patients and their families.
- In October 2024, Ms. Toops was appointed as Interim Class Counsel in *Owens v. MGM Resorts International*, No. 23-cv-1480-RFB-MDC, consolidated class action arising out of a data breach of MGM affecting over 74 million consumers.

In May 2024, Ms. Toops and her firm, C&M, negotiated a settlement in *Castaneda v. Ardagh Glass, Inc.*, No. 23-cv-2214 (S.D. Ind.), a data breach action in the Southern District of Indiana, for a common fund of \$2.75 million representing over 5,300 class members—a record-breaking settlement in data breach class actions.

J. Frank Watson

Mr. Watson is a Tennessee trial lawyer who has been licensed since 1991, with bar admissions before the Courts of Appeal for the Fourth, Fifth, Sixth and Eleventh Circuits as well as before the U.S. District Courts for the Western and Middle District of Tennessee and the Eastern

District Court for Arkansas. He has concentrated much of his practice in consumer class actions and complex litigation, as reflect in the following case matters:

- *In re Taxable Municipal Bond Securities Litig.*, MDL No. 863 (E.D. La., filed Dec. 9, 1995) (in connection with the underwriting and sale of municipal bonds by Drexel Burnham Lambert, Mr. Watson served as defense class action liaison counsel on behalf of a class of secondary market securities broker-dealers before the Honorable Judge Morey Sear in the United States District Court for the Eastern Division of Louisiana).
- *Babb, et. al. v. Wilsonart Int'l, Inc.*, No. 01818-04, Div. 4 (Cir. Ct. Shelby County, Tenn., filed Mar. 30, 2004) (appointed Co-Lead Class Counsel to consumer class action involving defective kitchen countertops owned by over 10,000 consumers; case was certified as a nationwide class action and ultimately settled for compensatory damages of \$23.5 million to the class).
- *Logan, et al. v. SCB Computer Techs., Inc.* No. 03-2925 (W.D. Tenn., filed 2004) (appointed Lead Class Counsel to a collective and class action involving federal and state wage and hour violations, which resulted in a settlement for approximately 250 misclassified computer programmers).
- *Stephenson v. Equity Title & Escrow of Memphis, LLC, et. al.*, No. 06-67 (Cir. Ct. Dyersburg Cnty., Tenn. filed Apr. 21, 2006) (appointed Co-Lead Class Counsel in the successful certification and settlement of excessive title insurance of title insurance premiums involving over 10,000 consumers).
- *Squires v. The ServiceMaster Co. and Clayton Dubilier & Rice, Inc.*, CH-08-0471-Part II (Chancery Ct. Shelby Co., Tenn., filed Mar. 11, 2008) (appointed Co-Lead Class Counsel to employees who held options on ServiceMaster stock that had been wrongfully canceled; case settled on a class basis for \$1 million).
- *Howard v. Wilkes & McHugh, P.A. et al.*, No. 2:06-cv-2833 (W.D. Tenn., filed Dec. 12, 2006) (appointed Lead Class Counsel in class action against law firm for charging excessive fees in medical malpractice cases; case settled for \$4 million).
- *Ham et al. v. Swift Transp. Co., Inc.*, No. 2:09-cv-02145-JTF (W.D. Tenn., filed Mar. 11, 2009) (appointed Co-Lead Class Counsel to class of approximately 8,700 student truck drivers who lost their commercial drivers' licenses based on the alleged wrongful actions of Swift's trucking driving school; case settled for compensatory damages and debt write off valued in excess of \$17 million).
- *Manjunath A. Gokare, P.C. et al v. Fed. Express Corp.*, No. 2:11-cv-02131 (W.D. Tenn., filed Nov. 11, 2011) (appointed Co-Lead Class Counsel to class of consumers to whom Federal Express had improperly imposed residential surcharges for the delivery of packages to non-residential addresses; case was settled for \$20 million).
- *Youngblood v. Linebarger, Goggan, Blair & Sampson, LLP*, No. 10-cv-2304 (W.D. Tenn., filed 2010) (appointed Co-Lead Class Counsel in class action against law

firm for its collection of an unlawful attorney fee from delinquent real property taxpayers) and *Youngblood v. Linebarger, Goggan, Blair & Sampson, LLP*, CH-13-0899-Part III (Chancery Ct. Shelby County, Tenn., filed Jun. 18, 2013) (subsequent case settlement in state court for \$7.4 million).

- *Clemans v. New Werner Co.*, No. 3:12-cv-0518 (W.D. Wash., filed Mar. 2, 2012) (appointed Co-Lead Class Counsel in class action alleging that an attic ladder, made by Werner Co. prior to its bankruptcy in 2006, was defective; despite Werner's bankruptcy, case was settled by Werner's agreement to replace 300,000 attic ladders sold in the U.S, the retail value of which was \$48 million).
- *Goodman v. Cashman et al and CIGNA Life Ins. Co.*, No. 3:14-cv-229 (E.D. Ark., filed Dec. 10, 2015) (ERISA class action certified on behalf of participants in Crittenden Hospital Associations defunct health plan and appointed Co-Lead Class Counsel; class settlement achieved with termination of debt in the amount of \$7 million, and payments of \$1 million).
- *Powell v. Oldham and Shelby Cnty., Tenn. et al.*, No. 2:16-cv-02907 (W.D. Tenn., filed Nov. 17, 2016) (Section 1983 class action for violation of constitutional rights concerning Shelby County's unlawful detention; settled for \$4.9 million).

Plaintiffs respectfully submit that Mr. Watson has substantial experience in representing plaintiffs in class action litigation and can competently serve as Liaison Counsel in this matter.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the Court under Rule 23(g)(3) to appoint J. Gerard Stranch, IV as Chair and Jeff Ostrow, Gary Klinger, Linda Nussbaum, James Pizzirusso, and Lynn Toops as Members of Plaintiffs' Executive Committee. Lastly Plaintiffs request that the Court name Frank Watson as Liaison Counsel.

Dated: November 19, 2024

Respectfully Submitted,

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV

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CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was this 19th day of November 2024 filed via the CM/ECF system, which will electronically serve all counsel of record.

/s/ J. Gerard Stranch, IV

J. Gerard Stranch, IV